

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

NORMAN TODD,

Plaintiff,

vs.

CITY OF CLANTON, ALABAMA, a municipal corporation; by and through its **MAYOR, HONORABLE BILLY JOE DRIVER**, in his official capacity as Mayor and individually; **POLICE CHIEF JAMES HENDERSON**, in his official capacity, as well as individually; **CORPORAL GREG CHARLES**, in his official capacity and individually; and **CHRISTINE LITTLEJOHN**, an individual,

Defendants.

CASE NUMBER 2:07-CV-149-MEF

JURY TRIAL DEMANDED

AMENDMENT TO DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

COME NOW the City of Clanton, Alabama, a municipal organization, Mayor Billy Joe Driver, Chief James Henderson, and Corporal Greg Charles to file their Brief in Support of their Motion for Summary Judgment, and state as follows:

On October 3, 2007, Defendants submitted the Brief in Support of their Motion for Summary Judgment and stated the following in support of the notion

that Defendants are entitled to qualified immunity:

Qualified immunity is an affirmative defense to a Section 1983 action against a government official sued in his or her individual capacity. See Wilson v. Strong, 156 F.3d 1131, 1135 (11th Cir. 1998); see also Hill v. Dekalb Regional Youth Detention Center, 40 F.3d 1176, 1184 n.16 (11th Cir. 1994).

See Defendants' Brief in Support of Motion for Summary Judgment, p. 10.

However, Defendants misstated their contention and clarify the same herein.

Rather a defense to liability, qualified immunity is immunity from suit in and of itself.

Qualified immunity is ‘an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.’

Scott v. Harris, 127 S.Ct. 1769, 1774 n.2 (April 30, 2007) (emphasis added), citing Mitchell v. Forsyth, 472 U.S. 511 (1985). The Scott Court then begins its qualified immunity discussion following the three step analysis elucidated in Defendants' Brief. See Scott, 127 S.Ct. at 1774; Brief in Support of Defendants' Motion for Summary Judgment, p. 10-14.

Defendants respectfully request, therefore, that this Honorable Court take into consideration Scott v. Harris and its definition of “qualified immunity” as “immunity from suit rather than a mere defense to liability” and disregard the Wilson v. Strong and Hill v. Dekalb Regional Youth Detention Center cases in support of said former contention.

Respectfully Submitted,

/s/ James W. Porter II

James W. Porter II, one of the
Attorneys for Defendants, City of Clanton,
Mayor Billy Joe Driver, James Henderson,
and Greg Charles
State Bar ID ASB 3314 T79J
State Code POR001

/s/ Christy Lynn Sherbrook

Christy Lynn Sherbrook, one of the
Attorneys for Defendants, City of Clanton,
Mayor Billy Joe Driver, James Henderson,
and Greg Charles
State Bar ID ASB 2409 H65S
State Code SHE 094

OF COUNSEL:

PORTER, PORTER & HASSINGER, P.C.
P.O. Box 128
Birmingham, Alabama 35201-0128
(205) 322-1744
Fax: (205) 322-1750

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been *electronically filed* with the Clerk of the Court using the CM/ECF system which will send notification of such filing upon the following, this, the 8th day of October, 2007. If Notice of Electronic Filing indicates that Notice should be delivered by other means to any of the following, I certify that a copy will be sent via U.S. Mail, properly addressed, postage prepaid.

Donald G. Madison, Esq.
418 Scott Street
Montgomery, AL 36104

/s/ James W. Porter II
OF COUNSEL